

## **ANALYSIS OF THE TENTH CIRCUIT**

### **A. Number of Authorized Judges and Current Request for Additional Judges**

In 1990, Congress increased the Tenth Circuit's authorized judgeships from 10 to 12, but the court only received a full complement of judges in 1995. Chief Judge Stephanie Seymour testified that the Tenth Circuit is operating "efficiently and expeditiously" and has no need for additional judgeships. The circuit handles its workload by making use of senior and visiting judges, as well as programs such as judicial screening, "mentoring" of staff counsel work, and mediation.

### **B. Discussion of Tenth Circuit Caseload**

Annual filings in the Tenth Circuit increased by 31% between June 1987 and June 1997, up from 1967 to 2575. However, the court's pending caseload has actually decreased by virtue of a corresponding increase in terminations, with a total of 2575 filings and 2514 terminations in the year ending June 1997. In 1997, the court's pending caseload of 2044 cases was 231 cases below its caseload in June 1987, despite the fact that 608 more cases were filed in 1997 than in 1987.

The Tenth Circuit reduced its median disposition time from more than 16 months to just over 11 months. The median time from filing the last brief to hearing or submission was 3.9 months and the median time from hearing or submission to disposition was under 2 months, both under the national median times for all courts of appeals. Of the court's 2044 pending cases in 1997, 1139 or 56% had been pending for less than 7 months, and all were either in the briefing or early disposition screening stage. Of the remaining cases, 441 were either set for disposition on upcoming oral argument or conference or were already under submission in chambers, 308 were ready for calendaring, and 156 were before screening panels.

Approximately 30% of the Tenth Circuit's 1997 filings were prisoner petitions, down 36% in 1996. While the Prisoner Litigation Reform Act reduced prisoner section 1983 civil rights filings, state habeas petitions increased in the Tenth Circuit. Judge Seymour testified that recent legislative enactments, such as the Anti-Terrorist and Death Penalty Act of 1996, have diminished the court's motions work and screening time.

### **C. Tenth Circuit Case Management**

Judge Seymour credited the Tenth Circuit's Judicial Screening Program for the efficient management of her court's caseload. Cases are submitted to a 3-judge screening panel after the record and briefs are filed, where a judge, with the concurrence of the two other judges, determines whether a case should be retained, returned for placement on a conference calender for submission on the briefs after staff attorney analysis, or placed on an oral argument calender. According to Judge Seymour, this process is by far more efficient than other mechanisms because cases formerly decided after staff preparation are instead reviewed and decided by judges. As a direct result of the Judicial Screening Program, cases ready for submission decreased dramatically, with the number of cases fully briefed and ready for

calender dropping from almost 1000 in 1989, to between 200 and 300 in 1997. Judge Seymour also attributed the significant drop in the Tenth Circuit's caseload disposition time to the Screening Program, from 16.1 months in 1987 to 10.7 months in 1997. From June 1996 to June 1997, 503 cases were decided by screening panels after preparation in chambers.

Cases assigned to conference calenders are uncomplicated civil appeals or involve non-prisoner pro se appellants, and are decided on substantive legal issues after staff attorney preparation. Generally, three conference calendar panels are scheduled each month during February, April, June, August, October and December. In 1997, eighteen conference calendar panels met for a total of 18 days to dispose of 496 fully briefed cases without oral argument. In the year ending June 1997, 200 cases were mediated and dismissed before briefing, 1034 fully briefed cases were terminated without oral argument by screening or conference panels, and 450 cases were terminated on the merits after briefing and oral argument. Approximately 30% of all cases terminated on the merits were argued orally, which is about 10% below the national average.

The Tenth Circuit dispenses of all merit terminations with a written opinion that includes a rationale for the decision. In 1997, 397 opinions were published and 1087 were unpublished.

**Court Schedule and Recess Period:** All active and senior judges in the Tenth Circuit attend 5 regularly scheduled oral argument sessions per year, which increases the court's collegiality. The court sits 5 days in 4 divisions and hears 6 cases a day per division. On average, active judges sit 4 days and senior judges sit 2-3 days per regular session. Additional one or 2-day sessions are held in the summer throughout the circuit to dispose of criminal cases. A panel may convene a special session for death penalty cases or cases considering emergency stays. The court grants few en banc petitions, with only 6 en banc hearings in 1997. Judge Seymour also indicated that a significant amount of time is spent considering and disposing of procedural and substantive motions which are not factored into any statistical data.

**Use of Staff Attorneys:** The Tenth Circuit employs a staff attorney mentoring program where judges direct the work of staff attorneys in a manner similar to their law clerks. The court does not have a large ratio of central legal staff to judges; rather cases are decided with judicial input from the beginning.

**Use of Visiting Judges:** While the Tenth Circuit does have a higher average of visiting judges compared to other courts of appeal, almost all of these visiting judges are district court judges from the Tenth Circuit. In addition, Judge Seymour explained that the Tenth Circuit has a practice of inviting new district court judges in the circuit to sit on their court for an oral argument term, so the new judges can meet and familiarize themselves with Tenth Circuit practices.

**Use of Senior Judges:** The Tenth Circuit makes substantial use of its 4 senior judges who, at the time of the Subcommittee hearing, accounted for 10.6% of case participations in oral hearings.

**Use of Mediation Programs:** The Tenth Circuit's mediation program provides mediation services in civil appeals, many of which would have required oral argument and written decisions had they not been settled. Mediation conferences are usually conducted by telephone to avoid unnecessary expenses. According to Judge Seymour, the Tenth Circuit's mediation program has been extremely successful, having mediated 2782 civil appeals from April 1991 to December 1997. The number of cases that have concluded mediation through this program have increased steadily throughout the years, from 384 cases concluded in 1992 to 531 cases in 1997, and 153 cases resolved by settlement in 1992 and 200 in 1997. Of the closed files, 1109 cases were resolved by settlement, which is 40% of all cases. Because 19% of those cases would have settled anyway, Judge Seymour calculated that the actual impact of the program is settlement in about 21% of the cases mediated.

Judge Seymour expressed her strong support for mediation programs because they dispose of cases at a lower cost than by judicial decision. She explained that not only do those cases result in settlement, but some settlements are global in nature and can dispose of additional cases in other courts. According to Judge Seymour, settlements can resolve a fundamental dispute, forestalling the filing of additional lawsuits. Moreover, settled cases are not remanded for further proceedings in the lower courts, nor are they appealed to the U.S. Supreme Court. Judge Seymour calculated that if approximately 15% of appeals are reversed and remanded, for every 100 settlements, district courts are saved from the further processing of 15 cases. In fact, she believed that mediation programs could resolve as many cases as an additional appellate judge, and at about two-thirds the actual cost of a chambers and at just over half the expense of a chambers when associated costs of supporting a chambers are considered.

#### **D. Tenth Circuit Use of Other Court Efficiencies**

In addition to the mediation process, judicial screening and staff attorney mentoring programs, Judge Seymour testified that the Tenth Circuit tries to implement other court efficiencies to save money. She noted, for example, that Tenth Circuit conference panels increasingly confer by telephone to reduce travel costs. The court has saved money by acquiring and renovating a courthouse rather than building a new one, and has occupied smaller spaces than allocated under the guidelines. Non-resident judges share chambers and courtrooms, whenever practical.

#### **E. Conclusion**

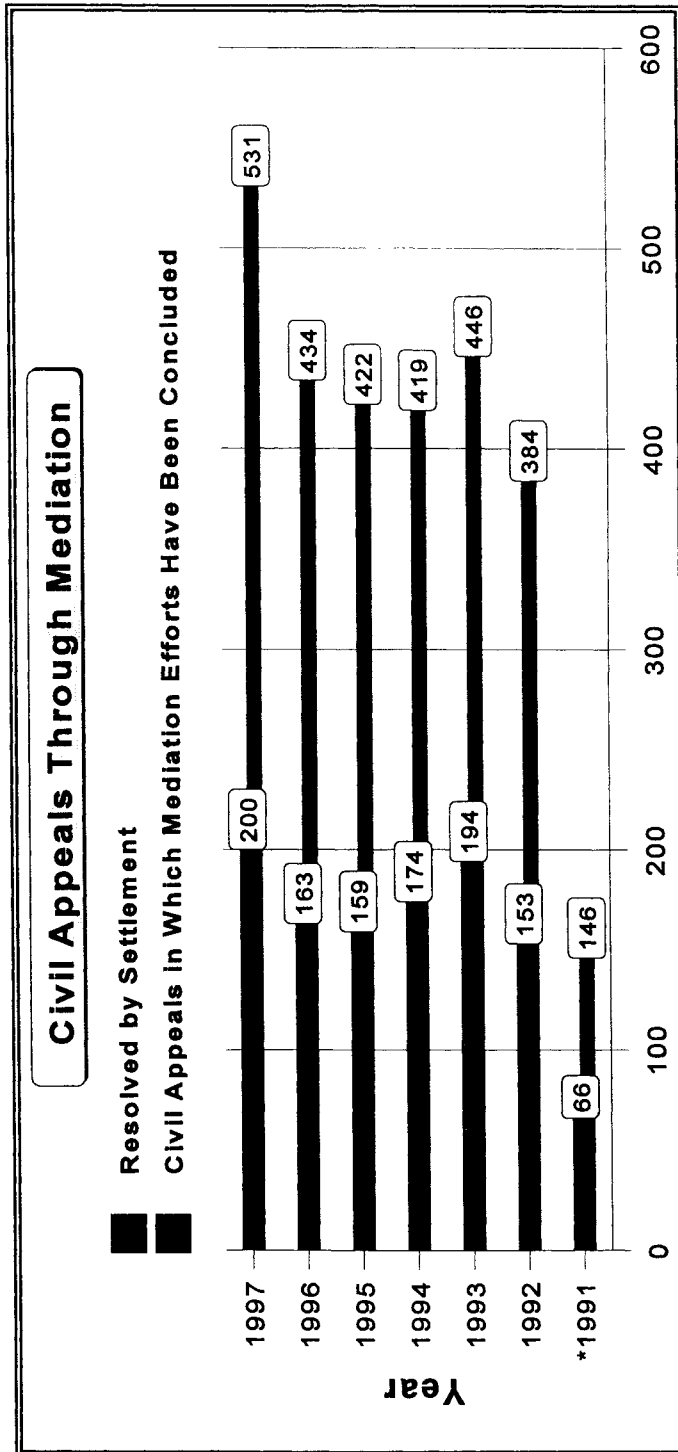
With little or no backlog, Judge Seymour testified that the Tenth Circuit "clearly has no current need for any additional judgeships." Further, the Tenth Circuit's attitude is that growth in the circuit should be approached cautiously, because an increase in size can have a negative effect on court collegiality, coherence of case law and effective court administration. Rather than increase the number of judges, the Tenth Circuit would prefer that Congress restrain growth in federal court jurisdiction, such as limiting the federalization of local crimes and eliminating diversity jurisdiction. In fact, Judge Seymour noted that in recent judgeship needs survey responses, her court asked for fewer judgeships than calculated by statistical data. She did, however, caution that while Tenth Circuit filings may have recently leveled

off, there may eventually be an increase in caseload or judges may become sick or retire, making it essential that future vacancies be assessed in a timely manner. Nonetheless, Judge Seymour testified that the Tenth Circuit would continue to explore additional ways to handle its caseload without adding more judges or staff, and without sacrificing the quality of the circuit's decisions.

# CHART D

## TENTH CIRCUIT MEDIATION OFFICE STATISTICS

### Civil Appeals in Which Mediation Efforts Have Been Concluded, Settlements and Settlement Rate During the Twelve-Month Periods From 1991-1997



	1991*	1992	1993	1994	1995	1996	1997	TOTALS
Concluded Mediation	146	384	446	419	422	434	531	2,782
Settlements	66	153	194	174	159	163	200	1,109
Settlement Rate**	45%	40%	43%	42%	38%	38%	38%	
Average Settlement Rate								40%

\* (April through December)

\*\* Court historical statistics indicate approximately 19% of cases in which mediation efforts have been concluded would settle anyway.

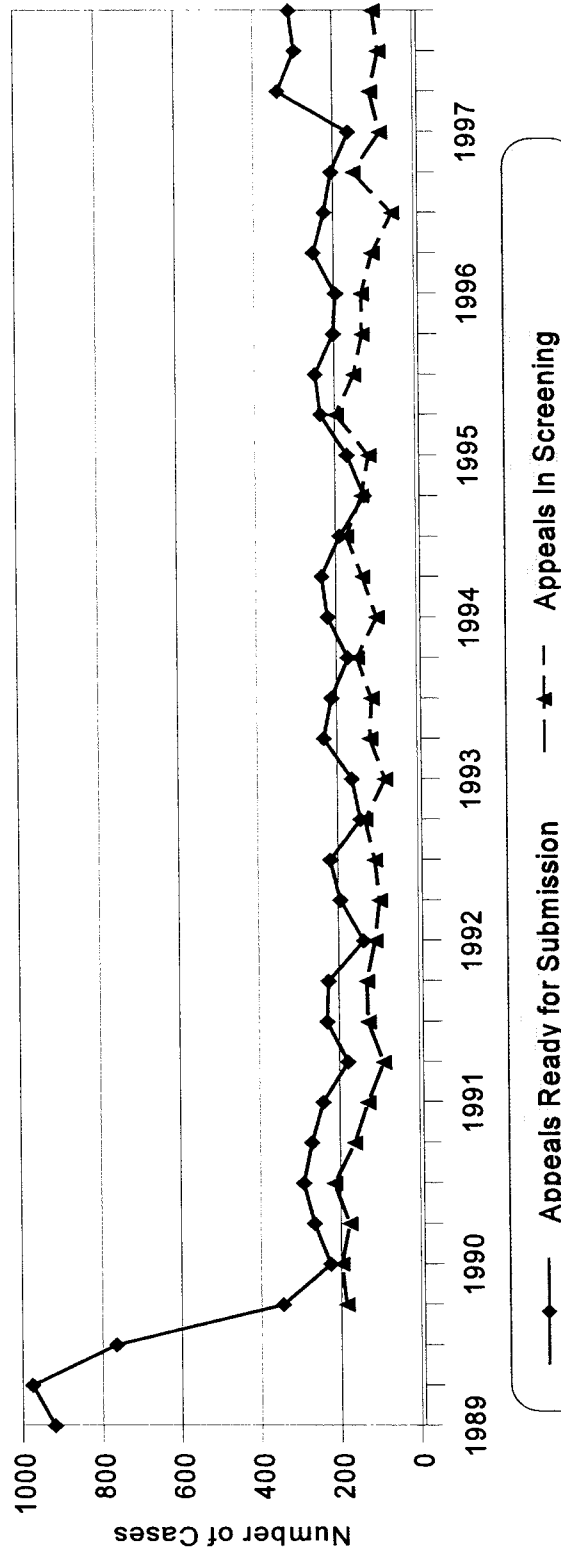
# CHART C

## U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT

### Judicial Screening Program Results 1989-1996

#### Appeals Ready for Submission and In Screening

Quarterly Average

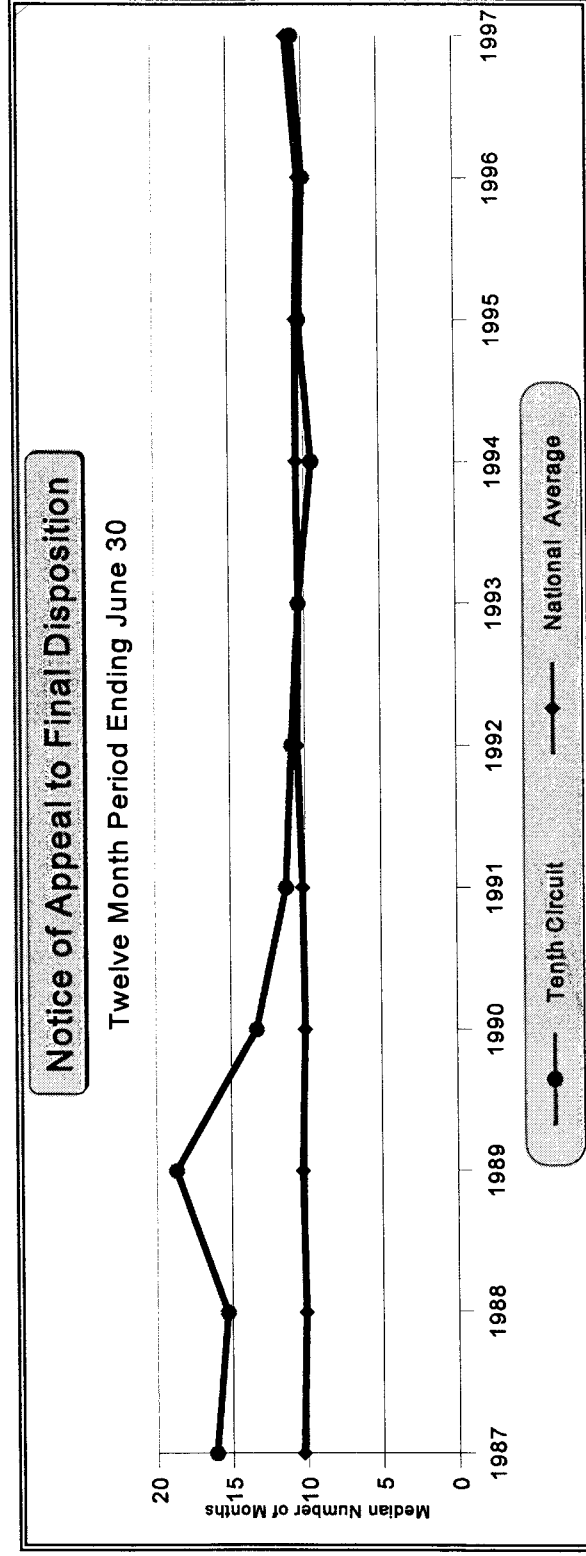


The Decrease of Cases Ready for Submission in 1989 Coincides with the Implementation of the Judicial Screening Program.

# CHART B

## U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT COMPARED TO THE NATIONAL AVERAGE

Caseload Disposition Time During the Twelve-Month Periods From June 30, 1987 - 1997



	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Tenth Circuit	16.1	15.3	18.7	13.3	11.3	10.9	10.4	9.5	10.3	10.0	10.7
National Average	10.3	10.1	10.3	10.1	10.2	10.5	10.4	10.5	10.5	10.3	11.1

# CHART A

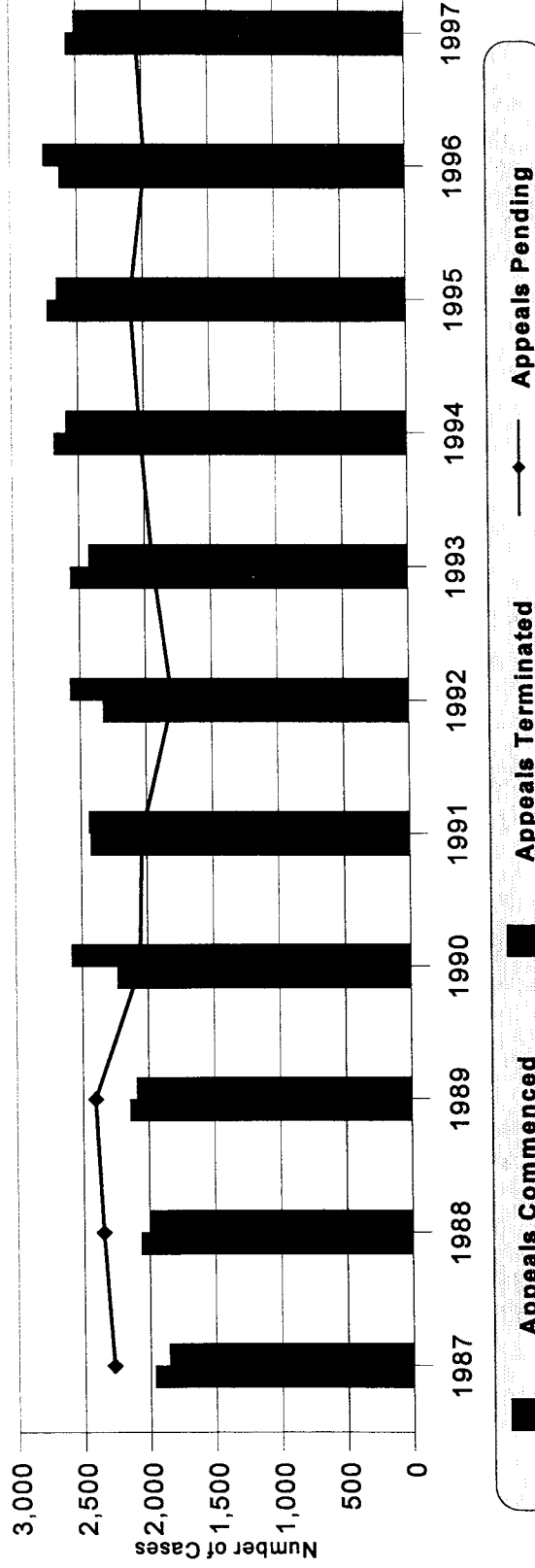
## U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT

Appeals Commenced, Terminated and Pending

During the Twelve-Month Periods From June 30, 1987 - 1997

### Commenced, Terminated and Pending Appeals

A Comparison



### U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT COMPARISON 1987 - 1997

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Appeals Commenced	1,967	2,066	2,144	2,233	2,429	2,327	2,569	2,684	2,729	2,631	2,575
Appeals Terminated	1,857	1,991	2,090	2,580	2,439	2,576	2,426	2,595	2,658	2,750	2,514
Appeals Pending	2,275	2,350	2,406	2,059	2,039	1,797	1,940	2,029	2,099	1,980	2,044